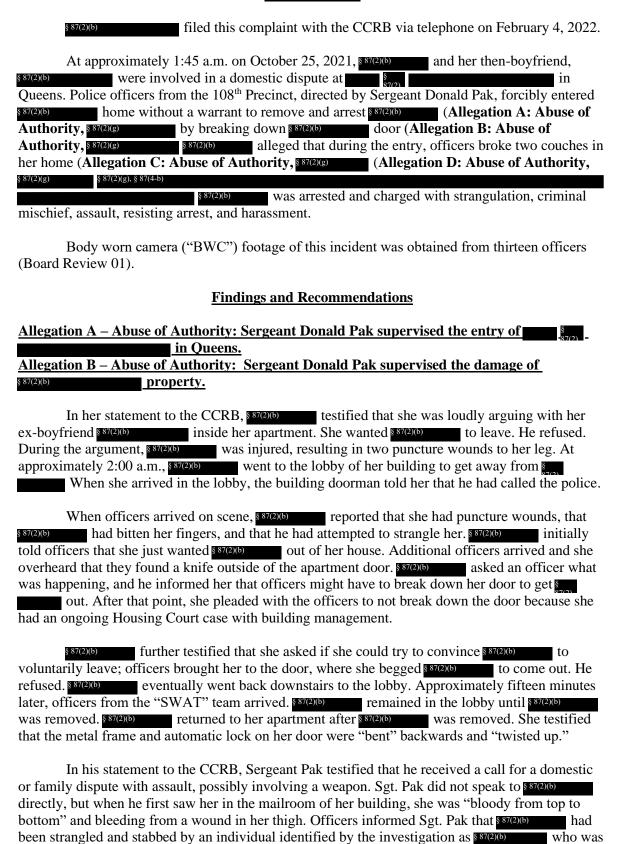
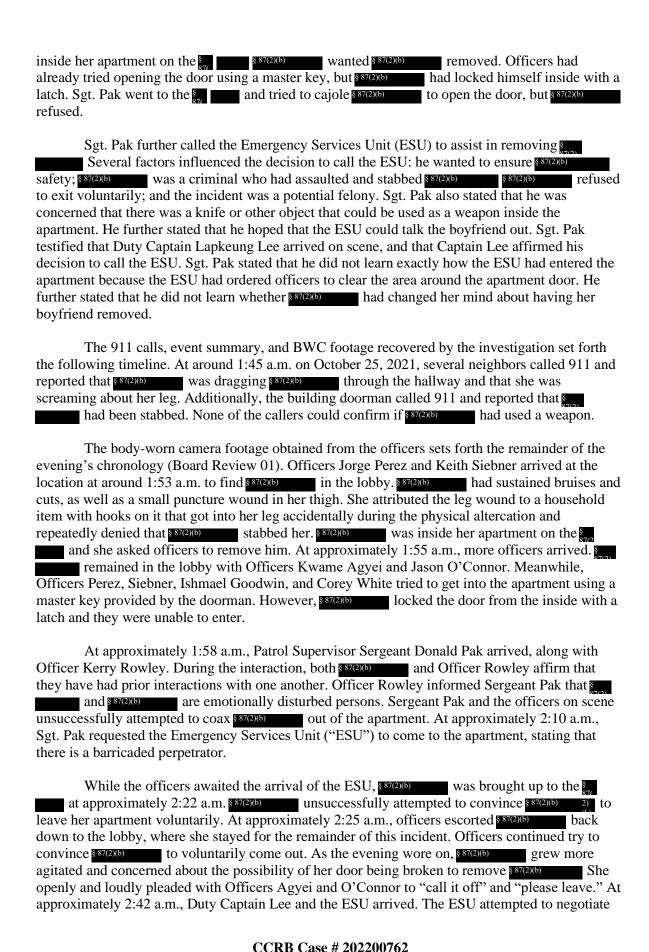
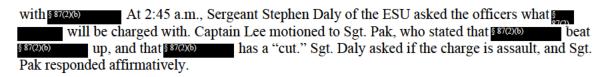
## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force		Discourt.		U.S.
Heidi Guzman		Squad #16	202200762	☑	Abuse		O.L.		Injury
Incident Date(s)		Location of Incident:			18 M	lo. SC	DL	P	recinct:
Monday, 10/25/2021 3:14 AM		11-39 49th Avenue Ap	t. 808		4/25	5/202	3		108
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	e Rece	ived at CCF	ιB	
Fri, 02/04/2022 3:38 PM		CCRB	Phone		Fri, 02/04/	/2022	3:38 PM		
Complainant/Victim	Туре	Home Addre	ess					_	
Witness(es)		Home Addre	ess					_	
Subject Officer(s)	Shield	TaxID	Command						
1. Officers	Silieiu	TAXID	Command						
2. SGT Donald Pak	05328	930901	108 PCT						
Witness Officer(s)	Shield N		Cmd Name					_	
1. PO Keith Siebner	27060		108 PCT						
2. PO Jorge Perez	12249		108 PCT						
3. PO Jason Oconnor	26668		108 PCT						
4. PO Kwame Agyei	01768		108 PCT						
5. PO Ishmael Goodwin	17332		108 PCT						
6. PO Corey White	29615		108 PCT						
7. Kerry Rowley	2,010	937448	100101						
8. DTS Paul Cella	04725		ESS 09						
9. DTS Daniel Neems	07489	935393	ESS 10						
10. DTS Steven Orlando	04489	934649	ESS 09						
11. DTS Matthew Gale	02971	948993	ESS 10						
12. SGT Stephen Daly	00944	945169	ESS 09						
13. CPT Lapkeung Lee	00000	939789	TRAFF ENF DIST						
Officer(s)	Allegatio	on			Inve	estiga	tor Recon	ıme	ndation
A.SGT Donald Pak	Abuse: S	ergeant Donald Pak sup	ervised the entry of Queens.	87(2) b)	)				
B.SGT Donald Pak	Abuse: S	ergeant Donald Pak sup property.		of					
C. Officers	Abuse: O	officers damaged § 87(2)(6)	prope	rty.					
D. Officers	Abuse: O	officers damaged § 87(2)(b)	prope	rty.					
§ 87(2)(g), § 87(4-b)									

## **Case Summary**







At approximately 2:51 a.m., called 911, who connected her to Internal Affairs. She told IAB that she wanted the officers to leave and that she did not want them to break down her door to enter.

At 2:51 a.m., the ESU broke the peephole in \$87000 door. Until approximately 3:12 a.m., the ESU continued to try to convince \$87000 to leave voluntarily. \$87000 refused and barricaded himself inside the apartment by pressing furniture up against the door. At approximately 3:14 a.m., the ESU entered the apartment by breaking down \$87000 door.

After a brief security sweep, the ESU officers apprehended \$87000

According to the arrest report, \$87(2)(6) was arrested on various felony charges, including strangulation (Board Review 02). \$87(2)(6)

Patrol Guide § 221-13 regarding Mentally III or Emotionally Disturbed Persons sets forth that where the emotionally disturbed person is isolated or contained but will not leave voluntarily, members of service should request the Hostage Negotiation Team and the Tactical Assistance Response Unit and comply with Patrol Guide Procedures 221-14 on Hostages and Barricaded Persons "where appropriate" (Board Review 03). § 221-14 provides the procedures when officers are responding to the scene of an incident where "persons are being held hostage or barricaded persons will not voluntarily surrender" (Board Review 04). The Patrol Supervisor on the scene should request the ESU, H.NT., and T.A.R.U. are enroute to the scene or otherwise request them. The procedures largely pertain to active hostage situations, where a "suspect takes a person under his or her control and subjects that person the risk of bodily harm for the purpose of furthering a criminal act or to facilitate escape."

Warrantless entries are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980) (Board Review 05). The presumption applies where the entry was for "the purpose of arresting a resident of the house." *Id.* at 588.

However, warrantless entries do not violate the Fourth Amendment where a party provides valid consent. Though no one factor is determinative of the voluntariness of consent, courts consider a variety of factors, including whether the person giving consent is in custody or under arrest, whether the person giving consent was evasive or uncooperative, and whether the person was advised that they had the right to refuse consent. *People v. Hernandez-Garcia*, 57 Misc.3d 1217(A) (Sup. Ct. Queens County, 2017) (Board Review 06). Additionally, consent may be demonstrated both verbally and via conduct. *People v. Johnson*, 46 A.D.3d 276, 277 (1st Dept 2007) (Board Review 07).

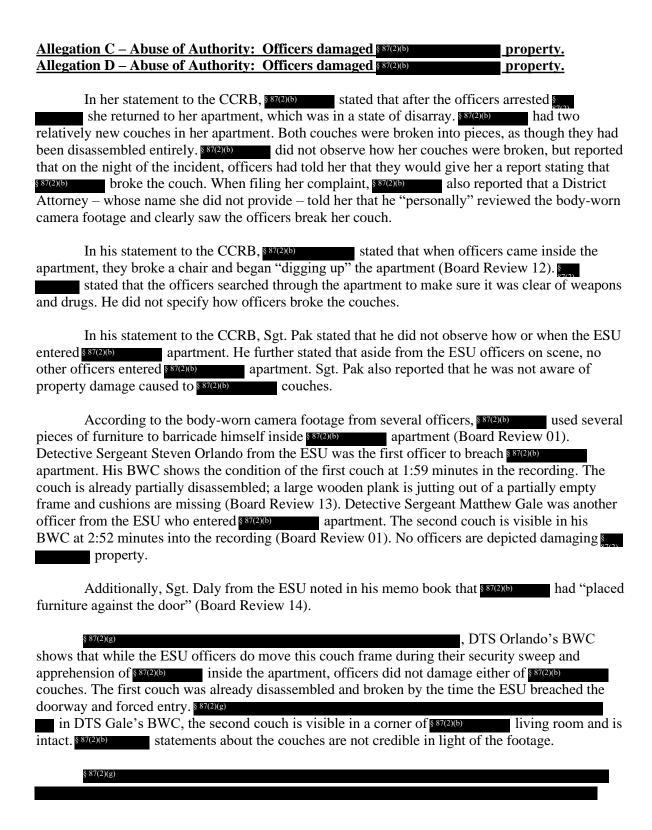
§ 87(2)(g)				
It is undisputed that \$87@00	stated	that she wanted	87(2)(b)	to be removed
from her home. She did so without being	g prompted or	asked by police	officers. She	likely
understood that this would require the of	fficers to physi	ically enter her h	ome. Howev	ver, by the time
the ESU arrived and \$87(2)(b) unders	tood that the e	ntry would requi	re physical o	lamage to her
door, § 87(2)(g)	§ 87(2)(b) re	peatedly stated to	o Officers A	gyei and
O'Connor, every officer that she encoun	itered, the 911	operators, and th	e Internal A	ffairs Bureau

that she wanted officers to "leave it alone" (Board Review 08, 09). These communications occurred before the ESU forced entry.

the other officers and the IAB did not communicate this to Sergeant Pak. Short of going up to the the state of the she was expressly told not to, did everything within her power to communicate to the officers that she did not want the ESU to force entry.

Notwithstanding consent, exigent circumstances may justify a warrantless entry, provided probable cause exists. In determining whether exigent circumstances are present, courts consider a variety of factors, including: "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause . . . to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." *People v. McBride*, 14 N.Y.3d 440, 446 (2010) (Board Review 10). These factors are not definitive or exhaustive; ultimately, the inquiry hinges on whether, in light of all the facts of the particular case, there was an urgent need that justifies a warrantless entry. *Id*; *United States v. Martinez-Gonzalez*, 686 F.2d 93, 100 (2d Cir. 1982) (Board Review 11).

§ 87(2)(g)
was outside of the premises when the officers arrived. Solution was locked inside an apartment on a high floor with no other exits. Any further danger to solution was completely attenuated. She was not a hostage at any point during the encounter. The officers on the scene characterized injuries as "cuts" and bruises. Although had barricaded himself inside the apartment, he did not pose an immediate threat to anyone. He was completely isolated and unarmed. This is especially true considering the number of officers present throughout the evening. These officers could have frozen the scene, enabling other officers to obtain a warrant.
Indeed, Sergeant Pak's repeated attempts to convince to exit voluntarily and prolonged period during which the ESU also attempted to gain voluntary compliance evince the lack of urgency. Sergeant Pak's statements during his CCRB interview that he was concerned about a possible weapon inside the premises are belied by his contemporaneous statements during the incident. He told multiple people, including Captain Lee, the Duty Captain who on the scene, that injuries were "cuts" and that there was no knife. ***STOON** was consistent throughout that ***STOON** did not stab her intentionally. There is no dispute that ***STOON** Committed a violent felony when he assaulted ***STOON** During the final conversation between Sgt. Daly from the ESU and Sgt. Pak, before the ESU forced entry, Sgt. Pak tells Sgt. Daly that ***STOON** will be charged with felony assault. In his testimony to the CCRB, Sgt. Pak cited to the felony assault as one of the reasons why he called the ESU. ***STOON**
may have been in danger had officers left the scene. But the alternative to a warrantless entry was not to leave the victim; the alternative was to freeze the scene and seek a warrant.
§ 87(2)(g)



§ 87(2)(g), § 87(4-b)		-	
	<u>Civilian and (</u>	Officer CCRB Histories	
§ 87(2)(b)			
•			
•			
CCRB	complaints and seven allegati	ce for twenty years and has been ions, none of which were substant	a subject in two tiated (Board Review
17). § 87	(2)(g), § 87(4-b)		
	Mediation, C	ivil, and Criminal Histories	
	omplaint was not suitable for i	nediation. k City Office of the Comptroller	has no record of a
Notice		ds to this incident (Board Review	
Squad:	16		
Investigator:	Heidi L. Guzman Signature	Inv. Atty Heidi L. Guzman Print Title & Name	September 1, 2022 Date
Squad Leader:	Carlmais Johnson	IM Carlmais Johnson	September 12, 2022

	Signature	Print Title & Name	Date
Di			
Reviewer:		<u> </u>	
	Signature	Print Title & Name	Date